

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

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ALI BAHAR, : CIVIL NO. 1:01CV798
Plaintiff, : (Consolidated with
-vs- : CIVIL NO. 1:02CV697)
CITY OF CINCINNATI, : Second Day of Jury Trial
Defendant. : Thursday, January 20, 2005
: Covington, Kentucky

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EXCERPT OF TRIAL PROCEEDINGS
CONTINUED TESTIMONY OF JULIA JOHNSON
BEFORE THE HONORABLE MICHAEL H. WATSON, JUDGE
AND JURY

- - -

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PROCEEDINGS

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THE COURT: Good morning, Miss Johnson.

THE WITNESS: Good morning, sir.

THE COURT: You're still under oath, ma'am.

Mr. Freking, you may proceed.

MR. FREKING: Thank you, Judge.

JULIA JOHNSON

CROSS-EXAMINATION (Continued)

BY MR. FREKING:

Q. Good morning, Miss Johnson.

A. Good morning.

Q. Yesterday we covered Mr. Bahar's career up until about August of 2000 to some extent with you. I don't want to rehash that at all. I think we got to the point where he was being reclassified from his EIT to a CET-4. Do you recall that?

A. Yes, I do.

Q. And you talked about application of the ten-year rule if there is a need in a particular area?

A. That's correct.

Q. All right. Could you please turn in the exhibit book you were looking at yesterday to Plaintiff's Exhibit Number 7?

A. Okay.

Q. Do you see that document?

A. Yes, I do.

1 Q. This appears to be a memo from you on August 18th of 2000
2 changing certain employees who were EITs to other
3 classifications; is that correct?

4 A. That's correct.

5 Q. All right.

6 MR. FREKING: We'd move for the admission of
7 Plaintiff's Exhibit 7.

8 THE COURT: Any objection?

9 MR. NESTOR: No, sir.

10 THE COURT: So admitted.

11 Q. All right. Miss Johnson, I'd like to direct your attention
12 to the middle of that page, and I think we had testimony
13 yesterday from you that Mr. Bahar was transferred shortly after
14 that memo to wastewater collection. Do you remember that?

15 A. That is correct.

16 Q. Okay. Was there room for Mr. Bahar in wastewater
17 collection at that time, do you know?

18 A. There -- yes, there was room for him.

19 Q. Did they have space problems in the physical location for
20 wastewater collection in order to find him a desk and a chair?

21 A. Okay. I'm sorry, when you said "room," I was talking in
22 terms of position availability --

23 Q. Right.

24 A. -- in terms of him transferring.

25 In terms of space, as the administrative superintendent I

1 would not know that.

2 Q. Who made the decision to move him to wastewater collection?

3 A. That was the director --

4 Q. Mr. Campbell?

5 A. -- and the superintendent. That would have been

6 Mr. Karney --

7 Q. Mr. Karney?

8 A. -- and the superintendent at the time. I mean, the

9 superintendent, Mr. Minges, based on the needs of that

10 organization.

11 Q. Now, there were other EITs in wastewater engineering also

12 like Mr. Bahar; right?

13 A. That is correct.

14 Q. Ms. Schmidt, Penny Schmidt, was she moved outside of

15 wastewater engineering to another area like wastewater

16 collection?

17 A. No. She was moved within the division from one program to

18 another program --

19 Q. She stayed in --

20 A. -- after the implementation of this.

21 Q. She stayed in engineering?

22 A. That is correct.

23 Q. All right. How about Cassandra Hillary?

24 A. She stayed within.

25 Q. How about Quiñones was also in engineering?

1 A. Yes, from program to program within the division.

2 Q. Stayed in engineering?

3 A. Yes.

4 Q. Do you know why it was that Mr. Bahar -- I think you agree
5 with me he was recognized as a very good employee within
6 wastewater engineering?

7 A. A good employee within the department, both treatment and
8 engineering.

9 Q. Right. And he had been in engineering since mid -- early
10 to mid '90s; right?

11 A. I think Mr. Bahar became a part of the engineering division
12 when there was a merger of the planning and program management
13 division which was 1999. So prior to that he was in another
14 division program.

15 Q. And do you know how it was that Mr. Bahar was the one who
16 was moved to wastewater collection as opposed to Ms. Schmidt,
17 Ms. Hillary, Mr. Quiñones?

18 A. I would think that based on Mr. Bahar's background,
19 mechanical and civil, that part of that was, as the memo has
20 indicated, that we would be moving them and placing them
21 according to their engineering special expertise or where their
22 studies were. So based on that, that's what my assumption is
23 is why Mr. Bahar was selected.

24 Q. Did anybody tell you why he was selected rather than the
25 others?

1 A. No more than I think based on need, yes.

2 Q. All right. And you think he had some kind of background
3 and experience for collection?

4 A. His background, his mechanical, yes.

5 Q. All right. Thank you.

6 And then did you find out -- did you find out later that
7 there were space problems within collection?

8 A. No, I did not.

9 Q. Could you turn in the other book, the larger book, to
10 defendant's exhibit which has got the City of Cincinnati emblem
11 on it, I think. Okay. You got that book?

12 A. Yes, I do.

13 Q. Could you look at Defendant's Exhibit 2023, please?

14 A. Yes.

15 Q. All right. We talked yesterday --

16 MR. FREKING: Oh, I'm sorry. We'd move for admission
17 of Defendant's Exhibit 2023.

18 A. I'm sorry, 2023?

19 MR. NESTOR: No objection.

20 THE COURT: So admitted. Thank you.

21 Do you have it, ma'am?

22 THE WITNESS: No, not yet, sir.

23 THE COURT: All right.

24 THE WITNESS: Yes.

25 Q. Okay. Now, Mr. Bahar reached the ten-year mark in 1998 as

an EIT; correct?

A. Yes.

Q. This is a November 2, 1999 memo, is it not?

A. Yes, it is.

Q. From Mr. Karney?

A. Yes.

Q. Campbell's boss?

A. Yes.

Q. Concerning working employees out of classification?

A. That's correct.

Q. Did this include working people out of classification beyond the ten-year rule? Did the ten-year rule apply to this memo at all?

A. No, it did not.

Q. So this has nothing to do with the ten-year rule?

A. This policy is preventing managers to take an employee in one class and work them in classes higher than what they were hired to be.

Q. Okay. Because MSD had recently come under scrutiny for allegedly working persons outside of their classifications; is that correct?

A. No. The onus of this policy was on the basis of an employee who felt they were worked out of class, and then, of course, part of that was a study by the City HR department and also working with the law department on this particular issue.

1 And the end result of that was a policy recommendation to
2 Mr. Karney that we put this policy in place. It clarifies and
3 prevents the employee from being worked out of class and a
4 penalty if that's so done.

5 Q. Had there been a rule previously not to do that?

6 A. There is a City rule, but this implement -- this policy was
7 more implemented in the department or reinforced in the
8 department. Yes, there is a City policy.

9 Q. Was there anyone disciplined for violating that policy
10 prior to November 2, 1999?

11 A. No. The purpose of this policy and the recommendation of
12 the law department was to not do discipline at the time but to
13 put a policy in place and educate the workplace on the
14 inappropriate actions of working people out of class.

15 Q. So even though people had been worked out of class, the
16 recommendation was let's not discipline any of the managers
17 involved; is that correct?

18 A. I wouldn't state it that way. I would say that if
19 supervisors were and we were not aware of them doing so, this
20 letter tells them they're not permitted to do so and if they
21 do, what would occur.

22 Q. All right. You're saying -- the first sentence, it says:
23 "MSD has recently come under scrutiny for allegedly working
24 persons out of classification."

25 A. That was an employee who filed a grievance, a union

employee who alleged that he was worked out of class which brought forth the end result of this, this policy.

Q. Very good. Thank you very much.

MR. FREKING: No further questions, Your Honor.

THE COURT: Thank you, Mr. Freking.

Ladies and gentlemen, ordinarily we would wait to conduct the direct of Miss Johnson until the defense's case, but by agreement of counsel they will conduct her direct examination now. She has been on cross-examination. She will now be on direct.

All right. Mr. Nestor, go right ahead.

MR. NESTOR: Thank you, Judge.

DIRECT EXAMINATION

BY MR. NESTOR:

Q. Good morning, Mrs. Johnson.

A. Good morning.

Q. When Mr. Campbell joined the MSD, who was the director?

A. Patrick Karney.

Q. And what were the two positions that Mr. Karney and Mr. Campbell held?

A. Mr. Karney was the director of MSD, and Mr. Campbell was the deputy director of MSD.

Q. And then just for the jury's information, how many divisions and division heads were there at the time?

A. There are six divisions and six division heads.

1 Q. And you were one of the division heads?

2 A. Yes, I am.

3 Q. Did the new administration -- when Mr. Karney and
4 Mr. Campbell began, did they do a reorganization of any of the
5 functions of MSD?

6 A. No, they did not.

7 Q. Did there --

8 A. The divisions remained the same as they were when they
9 joined the organization.

10 Q. We talked a little bit or you talked a little bit in your
11 examination earlier about the planning and program management
12 division.

13 A. That was not once they first got there. After they had
14 been there for a period of time.

15 Q. All right.

16 A. Then in '99 they did.

17 Q. Can you describe for the jury what that division was, the
18 planning and program management?

19 A. Yes. The City -- I mean, MSD has a large capital
20 improvement program that is the responsibility of the
21 engineering division now. Prior to that and their -- there was
22 an establishment of the planning and program management
23 division where the individuals there would work at trying to
24 initiate and get projects done very quickly in terms of
25 improving the sewer system either by upgrading, putting new

1 sewers, but that team was designed and responsible for bringing
2 forth and implementing the CIP in a very efficient and
3 effective manner.

4 Q. And did there come a time, then, when that department was
5 reorganized within MSD?

6 A. In '99 it was then merged back under -- it was an
7 independent division and then it was merged back into the
8 engineering division.

9 Q. And what -- was Mr. Bahar in that division?

10 A. Yes, he was.

11 Q. And then that entire division was transferred back to
12 wastewater engineering?

13 A. That's correct. It became a part of engineering.

14 Q. And so was Mr. Bahar affected when that reorganization took
15 place?

16 A. Yes. As all members of PPM was.

17 Q. Once he was in engineering and the written reprimand came
18 about, can you describe what kind of an effect does a written
19 reprimand have on an employee's pay?

20 A. It has no effect on the employee's pay.

21 Q. What kind of effect does a written reprimand have on an
22 employee's benefits?

23 A. It has none.

24 Q. And a City employee, as we know, that hopefully we are able
25 to get a yearly raise. What effect does a written reprimand

1 have on an employee's ability to get what is called a step-up?

2 A. If we were able to get them, none.

3 Q. And can you tell the jury, do City employees every year get
4 a step-up in pay?

5 A. The -- if you are currently under the climate now, if
6 you're a member of the AFSCME union, a negotiated effort, you
7 do. Management right now there are no merit increases per the
8 city manager's edict.

9 Q. Would a written reprimand have any effect on his promotion
10 eligibility?

11 A. No.

12 Q. All right. If you could go ahead and turn to the
13 Defendant's Exhibit 2000 -- 2002 which I believe was previously
14 admitted as Plaintiff's Exhibit 7, it's the memo of August
15 18th, 2000.

16 A. Yes.

17 Q. All right. And I just want to go through the individuals
18 that were affected.

19 First of all, as to -- and I'm going to use the defendant's
20 exhibit because that's the one I have, but this was already
21 marked for you. What is the date on the memo?

22 A. Date on the memo is August 18th.

23 Q. 2000; correct?

24 A. 2000, yes.

25 Q. And were you directed to issue that memo by Mr. Campbell?

1 A. Several months prior to that -- remember I mentioned
2 yesterday the need was to bring in engineering expertise, and
3 several months prior to this it was my staff, Mr. Karney
4 directing my staff to begin to research on how we might be able
5 to do that. And part of that review is looking to see the
6 ELTs, are they close to getting the P.E. license, professional
7 license; if not, where are there engineering vacancies.

8 This was an attempt not to increase, we could not add
9 additional positions to the organization, as much as try to
10 fill the existing things we have. So that's several months ago
11 prior to this Mr. Karney did have myself and staff looking at
12 this.

13 Q. And if it was Mr. Karney, who on your staff went about
14 determining who this rule applied to?

15 A. This is the HR staff. Linda Chandler who is my HR manager
16 and staff at the time.

17 Q. And it was -- is it fair to describe it as a process where
18 they determined who this rule would apply to?

19 A. That's correct.

20 Q. The individuals that are listed, if we could just -- well,
21 first of all, does the MSD, do they maintain a list of where
22 their employees are from originally or where -- what the
23 national origin of their background is?

24 A. No. That information is actually maintained with the
25 City's HR office.

1 Q. So the -- you're -- your function in HR for MSD, you don't
2 have a list of, for example, who is foreign born in the
3 department?

4 A. No, we did not.

5 Q. The individuals that are listed, do you know, though, if
6 they are Caucasian or from some other ethnicity?

7 A. Only in the sense that they would if a report would come to
8 us, but, no, I do not have any way of looking at something
9 saying that unless they have declared it.

10 Q. Well, for example, in this case we know Mr. Bahar's
11 background because of this case; correct?

12 A. That is correct.

13 Q. The other people who were EITs, were any of them to your
14 knowledge of a different ethnic background?

15 A. I -- I would say just based on the name, based on name I
16 would say Mr. Saeed is.

17 Q. And is there anyone else who is from a different ethnicity
18 that you know of personally?

19 A. Miss -- Mr. Efrain, I think.

20 Q. That's Mr. Quiñones?

21 A. Quiñones, yes.

22 Q. And was he also reclassified?

23 A. Yes.

24 Q. And was Mr. Saeed also reclassified?

25 A. Yes.

1 Q. And the remainder of those people were Caucasian; is that
2 correct?

3 A. Yes.

4 Q. And they were all reclassified?

5 A. Yes.

6 Q. All right. Turning back to the exhibit that was just
7 discussed by Mr. Freking, if you could turn to Defendant's
8 Exhibit 2023. First of all, what's the date on that memo?

9 A. The date on the policy is November 2nd, 1999.

10 Q. And if, for example, the City was working individual
11 employees outside their class, what was this policy designed to
12 prevent?

13 A. It was designed to prevent them from being worked out of
14 class so that they would be properly performing the job.

15 Q. All right. Who issued the memorandum?

16 A. It was issued by the director.

17 Q. And would you have received the memorandum?

18 A. Yes. As a matter of fact, we would have drafted the
19 policy.

20 Q. And then at the bottom there is a cc to the management team
21 of MSD?

22 A. Yes.

23 Q. Would that have included yourself?

24 A. Myself and all superintendents, yes.

25 Q. Do you know citywide if there was a concern with working

1 individuals outside of their classification?

2 A. As a part of the City's policies, personnel policies and
3 procedures, there is in the classification series it speaks to
4 not working people out of class. So there is a policy citywide
5 that governs this.

6 Q. And in particular, if you could turn to Defendant's Exhibit
7 2022.

8 A. Yes.

9 Q. Can you identify that document?

10 A. Yes. That is a document from the city manager entitled
11 "Working Employees Out of Classification."

12 MR. NESTOR: The defendants would move for the
13 admission of Defendant's Exhibit 2022.

14 MR. FREKING: No objection.

15 THE COURT: So admitted. Thank you.

16 Q. What is the -- I'm sorry, what is the date of that memo?

17 A. The date of this memo is June 5th, 2000.

18 Q. And just for the jury's benefit, who is that from and who
19 would that memo go to?

20 A. It is from the city manager, John Shirey, and it is to the
21 director -- I'm sorry, the department and division heads. So
22 it would go to the directors and division heads in the
23 departments.

24 Q. And we know that there is a director who is the head of
25 MSD. What function does the city manager serve in the City of

Cincinnati?

A. He is the director's boss.

Q. All right. And other than city council, is there anyone above the city manager?

A. No.

Q. All right. And what from your review of the memorandum, what does that order the department heads or direct the department heads?

A. It, too, is ordering not working employees out of classification.

Q. And if you could, turn to Defendant's Exhibit 2003.

Can you identify that document for the record?

A. Yes. It's a classification specification for engineer-in-training position.

MR. NESTOR: Defense would move the admission of Defendant's Exhibit 2003.

MR. FREKING: No objection.

THE COURT: Admitted. Thank you.

Q. Ma'am, if you could turn to page two of that classification, does this classification list the educational requirements for the EIT position?

A. Yes, it does.

Q. And does it also contain the ten-year rule?

A. Yes, it does.

Q. And when you review that classification specification, can

you tell when that classification specification was first implemented and then revised?

A. Yes. It was first implemented 1 of '86, revised 10/87, and then again 9/93.

Q. Do you recall discussing with Mr. Karney why there needed to be more senior engineers within the division?

A. It would not be me discussing why there would need to be more. It would be Mr. Karney saying there is a need to have engineers and a directive or an assignment to go about finding how we could hire those engineers.

Q. Did anyone from MSD, whether it be Mr. Karney or Mr. Campbell, ever indicate to you that the reclassification was directed at Mr. Bahar as opposed to all of the individuals who were in the EIT classification?

A. No, he did not direct it to any one individual.

Q. Once the reclassification memo was redistributed, what was -- distributed to the employees and the division people, what was the process for those employees in terms of their reclassification?

A. First, Mr. Karney had asked that myself and Linda Chandler meet with all of the affected employees to discuss with them that the reclassification was going to occur and the reason why, and that was predating the official approval by the Civil Service Commission so they would be aware.

Q. So the Civil Service Commission is an independent body

1 within the City, is that --

2 A. That is the governing body that approves all actions for
3 hiring and the classifications for the City.

4 Q. And if there is to be a change in classification, does it
5 require a Civil Service approval?

6 A. Yes.

7 Q. And in this particular circumstance was this change in
8 classification approved?

9 A. Yes.

10 Q. Within the Civil Service system, does a person have a right
11 to appeal --

12 A. Yes.

13 Q. -- any kind of job change like that if you're protected by
14 Civil Service?

15 A. Yes, they do.

16 Q. And were these individuals protected by the Civil Service?

17 A. Yes, they were.

18 Q. Did anyone appeal the reclassification?

19 A. Mr. Bahar did appeal.

20 Q. And what's your understanding of the outcome of the appeal
21 in the Civil Service Commission?

22 A. My understanding of the outcome was Mr. Bahar appeared
23 before the Commission. The Commission denied the appeal. I
24 think at the time Mr. Bahar not only appealed the
25 reclassification but requested a new job title of project

1 manager and that both that was denied. However, the Commission
2 did tell him that once he received his professional license,
3 MSD would appoint him -- must appoint him as a senior engineer.

4 Q. And was that, based on your understanding of the EIT
5 classification, is that the normal course for advancement from
6 EIT to an engineering position?

7 A. That's the normal course.

8 Q. So whoever is an EIT for this ten-year period, what
9 happened once they get their professional license?

10 A. They are promoted to senior engineer.

11 Q. When you issued the memo regarding the reclassification,
12 were you personally aware that Mr. Bahar had filed an internal
13 EEO complaint with the City of Cincinnati's EEO?

14 A. No.

15 Q. Do you know when you first became aware that there may have
16 been a -- an internal complaint to the City's EEO?

17 A. I think there was probably like an FYI that something had
18 happened later but not initially.

19 Q. Was it after the reclassification memo that you became
20 aware that there was an internal EEO complaint?

21 A. I cannot recall.

22 Q. All right. Did Mr. -- we talked a little bit about your HR
23 versus the City's EEO. Can you describe the function -- the
24 difference between the functions of an internal EEO person in
25 MSD and the City's EEO?

1 A. Okay. Within MSD, as I said yesterday, Mr. Wendell Young
2 is the only person. There is no staff who an employee of MSD
3 if they have an issue or concern about discrimination or they
4 feel that they are -- there is disparate treatment, any
5 violation of Title VII, they can contact Mr. Young and he will
6 do an internal investigation.

7 If they're not satisfied, they still can go outside and
8 avail themselves to the City resources. The City's EEO
9 department reports directly to the city manager and, again,
10 investigates issues of Title VII, does have a staff, is
11 accountable to the city manager and the city council around
12 hiring practices, and also to let them know about
13 discrimination cases and the resolutions of those.

14 Q. Now, in your department if there is -- as to any employee
15 who comes to Mr. Young or whoever the EEO officer is, do you
16 necessarily automatically know that there's been a -- an issue
17 raised by an employee?

18 A. No. The nature of my section is it's confidential. And
19 it's really so that the employee can feel that they can at
20 least have a resource and it's not spread or talked.

21 Q. As to the City's EEO office function, first of all, I don't
22 know that the jury knows this, but where is the MSD
23 administration physically located?

24 A. 1600 Gest Street.

25 Q. All right. And where is the City's EEO office located?

1 A. It was located in the Centennial Two downtown by City Hall.

2 Q. At the time?

3 A. Yes.

4 Q. And now where is it?

5 A. It's in the City personnel department.

6 Q. Which is physically where?

7 A. It's physically in Centennial Two also on the second floor.

8 Q. So two -- there's the City -- is it fair to say that that's
9 the City Hall location for city administration functions?

10 A. That's correct.

11 Q. And then you're -- the MSD is physically located, the
12 administration is located at the treatment plant on Gest
13 Street; is that --

14 A. In the Price Hill area.

15 Q. Just so the jury knows physically where you are.

16 If there is a complaint to the City's internal EEO, are you
17 automatically notified?

18 A. Are we speaking of MSD or the City? Or both?

19 Q. The City. If there is an internal complaint to the City's
20 EEO, first of all, do you know are you automatically, you
21 personally, are you automatically notified?

22 A. No.

23 Q. All right. And do you know typically how it happens that
24 the department is notified that there is an internal EEO
25 complaint?

1 A. The contact usually is from the EEO office to the director
2 of the departments.

3 Q. And then how do you become aware?

4 A. Only would in a report setting. Once the investigation has
5 been done and a report is sent from downtown, that information,
6 that report may come to us for records.

7 Q. So is it fair to say there's typically a period of time
8 between the City's internal EEO investigation and when the
9 department is notified?

10 A. Yes.

11 Q. And you don't know specifically when your department was
12 notified of the internal EEO complaint?

13 A. No, I can't recall.

14 Q. And that information would typically go to the director?

15 A. That's correct.

16 Q. Mr. Young, Wendell Young, he's the internal EEO officer for
17 your department?

18 A. Yes.

19 Q. He was at the time?

20 A. He still is.

21 Q. All right. Do you know when he started?

22 A. He started in 2000. He came to us from the police
23 department. He first started working with -- he was the
24 assistant personnel director for the City of Cincinnati. Then
25 he was moved to the police department as a training coordinator

1 and then came to us in 2000.

2 Q. All right. You don't recall in particular the exact date
3 that he started at MSD?

4 A. Not the exact date.

5 Q. All right.

6 MR. NESTOR: Your Honor, if I may approach the witness
7 to refresh her recollection. I'm just going to show her --

8 THE COURT: Yes.

9 Q. And I'm showing you a document. Without reading the
10 document, does that refresh your recollection as to when
11 Mr. Young would have started at MSD?

12 A. Yes.

13 Q. All right. And what was the date that Mr. Young started at
14 MSD?

15 A. Effective date was August 19th, 2000.

16 Q. All right. Thank you.

17 After the Civil Service appeal, did Mr. Bahar eventually
18 take and pass the exam to get his license?

19 A. Yes, he did.

20 Q. And do you recall if you were notified regarding his
21 passing?

22 A. Yes, I was, by way of an e-mail from the director
23 congratulating Mr. Bahar on passing and directing him to bring
24 his information to me.

25 Q. If you could, then, turn to Defendant's Exhibit 2098.

1 A. Could you repeat that again, please?

2 Q. Defendant's Exhibit 2098. It should be at the very end.

3 And, if you could, identify that document for the record.

4 A. It's a series of e-mails.

5 Q. Okay.

6 MR. NESTOR: Defendants would move for the admission
7 of Defendant's Exhibit 2098.

8 MR. FREKING: No objection.

9 THE COURT: Admitted. Thank you.

10 Q. All right. The original -- I'm going to show you the
11 original message first of all, as these are e-mails. What was
12 the bottom message on the e-mail?

13 A. The bottom message is from Mr. Bahar, promotion to senior
14 engineer. It's to Mr. Campbell.

15 Q. Does it indicate the date that he was given his license or
16 submitted the information that he had passed his --

17 A. On January 31st.

18 Q. And then as the human resource person for MSD, would you
19 then be responsible for his promotion or at least the paperwork
20 regarding the promotion?

21 A. That's correct.

22 Q. All right. And then did you respond -- well, first of all,
23 did you get a copy of that e-mail that was sent to Mr. Campbell
24 from Mr. Bahar?

25 A. No -- yes, I did. I'm sorry.

1 Q. And then you respond and then that's on the top; correct?

2 A. Yes.

3 Q. All right. Does that indicate when you became aware
4 regarding the passage of the exam?

5 A. Yes. February 7th, 2002.

6 Q. And did you indicate to Mr. Bahar what actions you would
7 take?

8 A. Yes. I responded to Mr. Bahar's e-mail from home. I had
9 had eye surgery, and so I responded to let him know when I
10 would be returning so that he would know that we would be
11 taking care of the matter.

12 Q. Then is there a process that you go through to confirm that
13 he has actually passed the exam?

14 A. Yes. Part of the process is that we then touch base with
15 the Boards that where the test was passed. We also --
16 Mr. Bahar's license, he passed it in Pennsylvania and then he
17 had to get reciprocity in the state of Ohio, and so it was
18 verifying all of those things and then taking that verification
19 and submitting that to the Civil Service Commission.

20 Q. And then did Mr. Bahar eventually receive his promotion?

21 A. Yes, he did.

22 Q. And do you know what the time period was between the
23 February 7th e-mail and when he was officially promoted within
24 the City system?

25 A. The official Civil Service action was in March after all of

1 the query and input and things. But the promotion's effective
2 date was retroactive back to February the 2nd -- I'm sorry,
3 February 3rd.

4 Q. And did he receive a pay raise, to your knowledge,
5 regarding his promotion?

6 A. Yes, he did.

7 Q. All right. When an MSD employee is promoted within the MSD
8 to a position like senior engineer, is there a typical raise
9 for such an employee?

10 A. Yes.

11 Q. And is that -- what is the typical raise?

12 A. It's normally 5 percent.

13 Q. All right. Turning to Defense Exhibit 2093, if you could
14 take a look at that document.

15 A. Yes.

16 Q. And if you could identify that document for the record.

17 A. It is a document that was prepared by us that speaks of
18 employees and the percentages that they've gotten at the time
19 of promotions --

20 Q. Okay.

21 A. -- between different time periods.

22 MR. NESTOR: Defendants move the admission of Defense
23 Exhibit 2093.

24 MR. FREKING: No objection.

25 THE COURT: Admitted.

1 Q. This is a two-page document that lists raises for time
2 periods; is that correct?

3 A. Yes.

4 Q. And Mr. Bahar is demonstrated there on the first page?

5 A. Yes.

6 Q. And what time frame did your office look at to compile the
7 list of promotions on page one?

8 A. From 1/1/2000, 7/1/2002. It's 7/1/2002, 1/1/04.

9 Q. And does that list the employees at MSD that received a
10 promotion from one rank to a different rank?

11 A. That's correct.

12 Q. And does it demonstrate the typical amount of -- as a
13 percentage amount of a raise for an MSD employee who receives a
14 promotion?

15 A. That's correct.

16 Q. All right. And does this document comport with your
17 understanding that the typical raise is 5 percent?

18 A. That is correct.

19 Q. But some lucky people in fact got more than 5 percent; is
20 that correct?

21 A. The -- there are some that are showing 10 percent.

22 According to the City's policy, the normal is 5 percent. An
23 individual can get 10 percent with additional justification by
24 the superintendent of the area to the department director. But
25 the policy does lend itself that if there are additional

1 expertise, that they want to appeal to get an additional
2 increase.

3 Q. And some unlucky people get less than 5 percent?

4 A. It appears that way. But each classification has a salary
5 range and so, therefore, when the person is advanced up, if it
6 does not lend itself within that range to be 5 percent, that's
7 what you see happening. It's not that they're just getting --

8 Q. Okay. I just wanted to make sure.

9 Have a problem.

10 So Mr. Bahar received a 5 percent?

11 A. Yes, he did.

12 Q. And that -- the first page lists all the promotions from
13 January of 2000 through July of 2002?

14 A. That's correct.

15 Q. All right. And then the second portion is those promoted
16 between July of '02 and January of '04?

17 A. That's correct.

18 Q. And if you turn to the second page, this is an example of
19 someone who receives 10 percent. The last person who is listed
20 there, is -- could you tell us what that is?

21 A. Bi ju George.

22 Q. And do you know if Mr. George, is he Caucasian?

23 A. No, he's not.

24 Q. Is he of Asian descent, if you know?

25 A. I know that he's not an American, yes.

1 Q. Okay. And he received a 10 percent raise?

2 A. Yes, he did.

3 Q. How does an employee go about getting a 10 percent raise?

4 A. Again, as I mentioned before, the City policy allows with
5 the promotion a normal 5 percent increase. With additional
6 justification by the superintendent to the director, an
7 approval can be made for 10 percent. That then is submitted
8 and accepted by the City's HR department. So there's also a
9 possibility that even downtown could question the 10 percent.

10 Q. Once Mr. Bahar was transferred from wastewater engineering
11 to wastewater collections, and physically describe where
12 that -- where those two different divisions are housed.

13 A. The engineering division is at 1600 Gest Street in Price
14 Hill. The wastewater collections division is on Galbraith Road
15 by Drake Hospital.

16 Q. All right. Once he was shifted, did you receive any
17 information from wastewater collections that Mr. Bahar was
18 performing job duties outside of his classification?

19 A. I don't recall that.

20 Q. All right. And did you receive -- did your department, to
21 your knowledge, receive any complaints after he was transferred
22 regarding any kind of discrimination complaint while he was at
23 wastewater collections?

24 A. Not to my memory.

25 Q. All right. Those are all the questions I have for you now,

1 Mrs. Johnson. Thank you.

2 THE COURT: Thank you, ma'am. You may step down.
3 Approach.

4 SIDEBAR CONFERENCE

5 THE COURT: My standing order says counsel shall
6 expect direct, cross, and redirect. I almost never grant
7 recross. What do you have?

8 MR. FREKING: I have very little.

9 I guess I'm confused only because they've just done
10 their direct. I mean, I did -- well, it puts us in a bind. We
11 would normally have --

12 THE COURT: It's a little different.

13 MR. FREKING: Yeah, it's a little different.

14 It's not going to be lengthy. She's -- I think they
15 said a few things today that differed from what she said
16 yesterday. I just want to get those clarified and then follow
17 up on some things he said. Very -- I got five -- or it will be
18 short.

19 THE COURT: I'll allow it --

20 MR. FREKING: Okay.

21 THE COURT: -- with this witness. But I just wanted
22 to make sure everyone is on notice about it. Okay.

23 MR. FREKING: Okay. So if we call somebody on cross
24 in our case in chief, then they put them on in their case in
25 chief, have we somehow -- have we waived our right under your

1 standing order to ask them questions in their case?

2 THE COURT: Not necessarily, as you can tell by my
3 ruling with respect to this, but I want to know what it's
4 about.

5 MR. FREKING: Okay.

6 THE COURT: Okay. All right.

7 MR. FREKING: We'll usually be pretty short, I think.

8 MR. GIGLIO: Thank you.

9 MR. NESTOR: Thank you.

10 MR. GIGLIO: Thank you, Your Honor.

11 SIDEBAR CONFERENCE CONCLUDED

12 THE COURT: She escaped.

13 Will somebody please get the witness?

14 She's probably out the front door already.

15 MR. FREKING: I think I've seen a commercial with
16 somebody running through the airport out of the courthouse.

17 COURT SECURITY OFFICER: She totally escaped. I'll
18 get the radio and see if I can catch her before she gets out
19 the door, Your Honor. What is that lady's name?

20 THE COURT: Miss Julia Johnson.

21 Anybody else warm? Too warm?

22 Okay.

23 COURT SECURITY OFFICER: They have retrieved her. She
24 will be right back.

25 THE COURT: Thank you.

1 MR. FREKING: Your Honor, maybe while we're waiting,
2 could I request that the document that she was handed be marked
3 as Plaintiff's Exhibit 14?

4 THE COURT: Any objection?

5 MR. NESTOR: No. No, sir.

6 MR. FREKING: We'll make copies at lunchtime or
7 something and put a label on it.

8 THE COURT: Very well.

9 Are you moving its admission?

10 MR. FREKING: We move for its admission.

11 MR. NESTOR: No objection.

12 THE COURT: Very well. Admitted.

13 (Ms. Johnson entered the courtroom.)

14 THE COURT: You're quick.

15 COURTROOM DEPUTY: Do you want her to have it back?

16 MR. FREKING: Yes, please.

17 THE COURT: Mr. Freking has just a few questions for
18 you.

19 Go right ahead.

20 MR. FREKING: Thank you.

21 CROSS-EXAMINATION

22 BY MR. FREKING:

23 Q. Ma'am, I had not seen that document before this morning.
24 The document you refreshed your memory with on Wendell Young's
25 start date in MSD --

1 A. Yes.

2 Q. -- it appears to be August 19th?

3 A. August 19th, 2000.

4 Q. I think you testified yesterday that you believed Mr. Young
5 was in his role as the EEO officer in MSD when Mr. Bahar filed
6 his -- we looked at those e-mails yesterday dated July 5th --
7 25th and July 27th of 2000. Do you recall that?

8 A. Now please refresh my memory.

9 Q. Well, let's just -- obviously do you recall that Mr. Bahar
10 got his reprimand on July 10th?

11 A. Yes.

12 Q. If he filed an internal EEO complaint on July 25th or July
13 27th, obviously Mr. Young had not become the EEO officer yet of
14 MSD?

15 A. That would be true.

16 Q. So the appropriate person would have been to go to I think
17 you mentioned Chandler and Farria?

18 A. No. The -- if he filed an EEO complaint and Mr. Young was
19 not there, he would have gone to Mr. Chapman as he did. Okay.

20 Q. Okay.

21 A. I think yesterday my memory recollection of your question
22 was had he had -- Mr. Bahar had any contact with me, and I said
23 it might have been with my staff. I don't recall directly with
24 me.

25 Q. You don't recall mentioning Wendell Young yesterday?

1 A. And I thought that was pertaining to the reclassification
2 piece, not the -- not the complaint.

3 Q. Okay. If you would look at that exhibit you identified
4 this morning as Defendant's Exhibit 2003. Okay?

5 A. Yes.

6 Q. And this is the thing about the ten-year rule; right?

7 A. Yes.

8 Q. On the second page?

9 A. Yes.

10 Q. Now, would you agree with me that this rule actually says
11 that a person who has been there for ten years, quote, will be
12 reclassified without any qualifiers, like you said yesterday
13 only when there is a need? It doesn't say anything about doing
14 it when there is a need?

15 A. No. The class spec says "will," yes.

16 Q. Okay. When policies say something will happen, they should
17 happen?

18 A. They -- so your point being in '98 it should have happened.

19 Q. If you're following the policy. The policy says the
20 incumbent will be reclassified?

21 A. Yes. The class spec says that, yes.

22 Q. And --

23 A. For these six individuals it did not happen.

24 Q. And was there a need -- is it your testimony this morning
25 you were told in 2000 that there was a need for six P.E.s to

1 replace the EITs?

2 A. I -- it is my testimony that Mr. Karney said we need to go
3 about hiring engineers with professional license and that part
4 of that action was reclassifying all of the EITs who had not
5 gotten their professional license in order to be able to fill
6 engineering positions for MSD.

7 Q. Okay. Maybe I'm just missing something in the translation.
8 It would seem to me if I was in that position and he said we've
9 got to get some professional engineers, my next question would
10 be how many before I decide how many I'm going to move out of a
11 job; right? If you're going to move six people out, wouldn't
12 it be logical to say are we going to fill these six slots with
13 six people or not? Maybe I'm wrong. He just said I need some
14 new P.E.s and somebody decided to move six?

15 A. Okay. I cannot recall the specific conversation from
16 Mr. Karney in terms of numbers of people, but I do know from
17 the moment we moved the EITs we proceeded with advertising and
18 bringing in senior engineers with license; and we have
19 continued to do that since this move.

20 Q. And you don't know whether or not you've hired six P.E.s or
21 not?

22 A. I am -- over the span since that time, I'm sure we have
23 brought in engineers.

24 Q. How about in calendar year 2000, do you know whether you
25 hired six P.E.s?

1 A. I'm sorry, I cannot recall that.

2 Q. All right. Thank you. No further questions.

3 THE COURT: Is that all of this witness?

4 MR. NESTOR: Yes, sir.

5 THE COURT: Now you can go.

6 THE WITNESS: Now I can leave.

7 THE COURT: Yes. Thank you.

8 And plaintiffs may call their next witness.

9 * * *

10 EXCERPT OF PROCEEDINGS CONCLUDED

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16 C E R T I F I C A T E

17 I, Julie A. Wolfer, the undersigned, do hereby
18 certify that the foregoing is a correct transcript
19 from the record of the proceedings in the above-entitled
20 matter.

21 s/Julie A. Wolfer
22 Julie A. Wolfer, RDR, CRR
23 Official Reporter
24
25

I N D E X

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